

Statement of  
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before the

Committee on Commerce, Science, and Transportation  
Subcommittee on Communications  
United States Senate

on

The Mobile Telecommunications Sourcing Act

on behalf of

The National Governors' Association

Senator Brownback and other members of the committee, thank you for inviting me to testify on S. 1755, the Mobile Telecommunications Sourcing Act. I am Ray Scheppach, executive director of the National Governors' Association, and I am testifying today on behalf of the association.

First let me thank you, Senator Brownback and Senator Dorgan, for your leadership and sponsorship of the Mobile Telecommunications Sourcing Act. The National Governors' Association is very excited about this legislation, particularly about the process that led to its creation and introduction at the end of last year. The wireless industry approached NGA and other state and local organizations slightly more than two years ago to bring an issue to our attention.

The issue was state and local taxation of wireless phone services. The wireless industry had originally approached Congress to solve their problems, but since the issue was by its very nature a state and local issue, you asked them to come to us first to see if we could work out a mutually acceptable solution. And that's exactly what we have done during the past two years. The solution that we reached is reflected in the legislation that we are discussing today.

We're hopeful that this approach can serve as a model for similar issues in the future. By working collaboratively, government and industry can develop solutions that end up working better for everybody than solutions that are developed unilaterally. This applies not just to collaboration between one level of government—such as state government—and industry, but also to collaboration between the different levels of federal, state, and local government. Part of what makes this legislation so exciting from our perspective is this unique cooperative approach

between all affected parties.

You are going to hear about a lot of the details of this legislation from the other witnesses today, so I would like to address the legislation from a slightly broader perspective. Many state and local telecommunications taxes and tax systems were created before the advent of wireless phones. The result of this is that we have tax systems in place that really are not appropriate for mobile telecommunications and consequently create a lot of administrative headaches and even financial liability for the companies in this industry. Fundamentally, we have a 20th century tax system that applies to a 21st century industry.

Let me just give you a few examples of what I mean. Some state and local tax jurisdictions require phone companies to tax telecommunications services where they occur. This is easy to do when I pick up a landline phone in my office or my home and make a call. It becomes a little more complicated when I pick up my cell phone and make a call.

Should the service be taxed by the jurisdiction where I am physically located at the time I am making the call? How does the phone company figure out where I am? What if I am driving between my home in Virginia and my office in the District of Columbia? What if the cellular tower that is transmitting the call happens to be located in a different tax jurisdiction than the one in which I am physically standing?

As you can clearly see, the issue becomes very complicated very quickly. And this list of questions applies only to one scenario of how a state or local tax jurisdiction requires the tax to be applied. The list may grow exponentially when you consider that different jurisdictions have different rules for determining how calls should be taxed. Some places tax

telecommunications services based on where the call physically takes place, other places apply taxes based on a customer's billing address, and others still determine taxes using the originating cell site, tower, or switch. It is simply unreasonable and incredibly burdensome to expect the phone companies to be able to figure out all these variables and then collect and remit taxes on behalf of all the appropriate jurisdictions.

These issues alone are sufficient to require a solution, but the problems go further than just figuring out the location of a call for tax purposes. The marketplace for cellular telecommunications services is evolving in ways that the existing tax system is not designed for and cannot accommodate. Just as the task of figuring out exactly where a call takes place for tax purposes has become increasingly complex in the wireless era, so has the task of figuring out exactly how much a call costs. Wireless services are often sold in buckets or bundles of minutes, so it is very difficult for the phone companies to assign a specific cost to each phone call or each minute of service for that matter. When you add this complicating wrinkle to the already difficult chore of figuring out which combination of state and local jurisdictions have the authority to tax a call, it becomes readily apparent why it is so important to overhaul the state and local tax system for wireless telecommunications services.

I touched on this point earlier, but I would like to emphasize again how remarkable and significant it is that different levels of government have worked so successfully with industry to reach a mutually acceptable solution. Rather than seeking to avoid existing tax collection responsibilities, industry approached state and local governments to help them develop a uniform and sensible approach to fulfilling these responsibilities on behalf of state and local

governments. The Mobile Telecommunications Sourcing Act does not seek to expand or reduce any company's tax collection responsibilities, nor does it seek to determine or change whether a state or local jurisdiction does or does not tax wireless services or at what rate they choose to do so.

The act creates a uniform method for determining where wireless services are deemed to occur for purposes of taxation. In those states where wireless services are taxed today, they will continue to be taxed under this bill. For those states that have chosen not to tax wireless services, they will continue not to be taxed. Furthermore, state and local governments will retain the authority that they have today to make future changes as their governors and legislatures decide regarding the taxability of these services and what rates apply to them.

The bottom line is that the Mobile Telecommunications Sourcing Act does what it needs to do in the way that it needs to be done. It establishes uniformity across state and local jurisdictions in the way that they determine which jurisdictions have the authority to tax a particular call. This provides the simplicity and consistency that industry needs. But the Mobile Telecommunications Sourcing Act also preserves the ability of state and local governments to make fundamental decisions about how to raise the revenues they need to provide essential public services ranging from educating children to building roads to providing police and fire safety. We appreciate the hard work of industry to address these issues in a fair and mutually beneficial manner and think that these efforts and the interests of industry, state and local governments, and consumers are well reflected in the Mobile Telecommunications Sourcing Act.

Thank you again for inviting me to testify today on behalf of the National Governors' Association. We look forward to continue working with you, your colleagues in the House, and the other groups represented here today to achieve passage of this important legislation. I would welcome any questions you might have.